

Bob Evans Farms, Inc. d/b/a Bob Evans Restaurants and Diane L. Gorrell. Case 33-CA-11389

November 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The issue presented here¹ is whether the judge correctly found that the Respondent violated Section 8(a)(1) of the Act by discharging and refusing to reinstate employees who walked off the job to protest the termination of their supervisor.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order as modified and set forth in full below.⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Bob Evans Farms, Inc. d/b/a Bob Evans Restaurant, East Peoria, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they have engaged in concerted activities protected under Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹ On July 10, 1997, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions with supporting argument. The General Counsel filed a brief in support of the judge's decision.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ Chairman Gould agrees with the judge that the employees engaged in a protected walkout, in accordance with the view stated in his concurring opinion in *Caterpillar, Inc.*, 321 NLRB 1178 (1996), that an employee protest about management hierarchy is protected when the protest is related to employment conditions.

⁴ We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

(a) Within 14 days from the date of this Order, offer Mike Cortez, Juan Cortez, Fatima Hsen, Kathy Barnard, Kris Leeds, Terry May, Derrick Brown, Peggy Booe, Jose Deltoro, Suzie Walker, Measoon Hsen, Charlotte Edmiston, and William Grammer, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the above-listed employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in East Peoria, Illinois, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge our employees because they have engaged in concerted activities protected under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mike Cortez, Juan Cortez, Fatima Hsen, Kathy Barnard, Kris Leeds, Terry May, Derrick Brown, Peggy Booe, Jose Deltoro, Suzie Walker, Measoon Hsen, Charlotte Edmiston, and William Grammer, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the above-listed employees whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and WE WILL, within 3 days thereafter, notify each of the above-listed employees in writing that this has been done and that the discharges will not be used against them in any way.

BOB EVANS FARMS, INC. D/B/A BOB
EVANS RESTAURANTS

Deborah Fisher, Esq. and *Sang-yul Lee, Esq.*, for the General Counsel.

Chris J. North, Esq. and *Robert A. Harris, Esq.*, of Columbus, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. On a charge filed on November 9, 1995, by Diane Gorrell, an individual, against Bob Evans Farms, Inc. d/b/a Bob Evans Restaurants (the Respondent), the General Counsel of the National Labor Relations Board (the Board), by the Regional Director for Region 33, issued a complaint dated March 14, 1996, alleging violations by the Respondent of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). The Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, trial was held before me in Peoria, Illinois, on December 4 and 5, 1996, at which the General Counsel and the Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

On the entire record in this case, and from my observations of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates restaurants throughout the United States, including one located in East Peoria, Illinois. During the calendar year preceding issuance of the complaint, in conducting its business operations, the Respondent derived gross revenues in excess of \$500,000, and purchased and received at its East Peoria restaurant goods valued in excess of \$50,000 sent directly from points located outside the State of Illinois. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Background

Since July 1995, the general manager and chief onsite official at the East Peoria store has been Andy Dunlap. Under him, until October 20, 1995, were First Assistant Manager Diane Gorrell, who ran the night shift; Second Assistant Manager Rhonda Pyatt, responsible for the day shift; and Second Assistant Manager Janet Hair and, later, Mark Weaver, who, primarily, filled in for Gorrell and Pyatt on their days off. Dunlap, Gorrell, Pyatt, Hair, and Weaver were, at all relevant times, statutory supervisors. One Tony Sally worked at the store as a manager trainee. East Peoria is one of six restaurants assigned to Area Director Dave Ward, Dunlap's immediate supervisor.

On October 20, 1995, the Respondent terminated Gorrell's employment for being intoxicated while in the restaurant; for bringing into the restaurant and consuming alcohol; and for insubordination toward Dunlap. The Gorrell discharge precipitated an immediate walkout by nearly all of the employees who worked under her supervision. Thereafter, the Respondent refused to allow any of those employees to return to work.

In the instant case, the General Counsel contends that, in light of Gorrell's role as a "buffer" between the second-shift

employees and other management officials, and the impact on their working conditions which those employees believed she had, their concerted protest, by walkout, of her firing was protected by Section 7 of the Act and the Respondent, by discharging and, later, refusing to reinstate them, violated Section 8(a)(1) of the Act. The Respondent urges that, in leaving the premises without supervisory permission, in violation of company rules, and without articulating any goals to which the employer could respond, the second-shift employees did not engage in protected activity, but, rather, quit their employment. In any event, the Respondent argues, as Gorrell did not occupy a "special position" with bearing on the employees' working conditions, and as the means of protest was unreasonable, the employees' activity in walking out was not protected under the Act, and they were subject to lawful discharge.

B. Facts¹

There is substantial record evidence that, for the 2-year period preceding her discharge, during which Gorrell worked as first assistant manager in charge of the night shift, the employees working under her supervision brought substantially all of their work-related problems to her. This was particularly so after Dunlap's arrival in July 1995. Indeed, as the then second assistant, Rhonda Pyatt, testified, "[T]he employees went to Diane with just about everything, yes." Thus, Charlotte Edmiston, a waitress, testified that she complained to Gorrell, in September or October 1995, that Dunlap had instructed the cooks to make the meatloaf portions smaller than called for in the recipe. On learning that, Gorrell told the second-shift cooks that portions were to be prepared to standard during the shifts that she supervised. Shortly before Gorrell's termination, Edmiston further testified, she, Edmiston, told Gorrell that when she worked alone with a management trainee, he had gone to the bathroom without closing the door. Gorrell assured Edmiston that something would be done about it, and that the employee would not, again, be alone in the restaurant with that individual.

Employee Suzie Walker, who worked as a hostess on the second shift under Gorrell, testified that, in 1994, she informed Gorrell, that another employee had kicked her at a time when she, Walker, was pregnant. Gorrell "wrote up" the offending employee. Later in the year, Walker complained to Gorrell that a certain manager was forcing her to handle closings, contrary to schedule, thereby interfering with her school work. As a result, Gorrell changed Walker's hours so that she would not work on nights when that manager was in charge of closing the restaurant. After Dunlap's arrival in the store, Walker talked to Gorrell about a pay increase. Gorrell took the matter to Dunlap, and Walker obtained the raise. Walker also spoke to Gorrell, she testified, about Dunlap standing about and repeating her name, over

and over, which made her feel uncomfortable. Gorrell told the employee to "hang in there."

On October 16, 1995, second-shift cook Jose Deltoro was discharged by Second Assistant Manager Mark Weaver. Soon thereafter, Deltoro testified, he went to Gorrell's house and told her that Weaver had been harassing him, and other minority employees, and, finally, fired him. Gorrell took the matter to Ward. Later, she urged Deltoro to meet with Dunlap, accompanied by other employees who could corroborate his version of events and help plead his cause. Deltoro did so, and was reinstated by Dunlap.

Second-shift waitress Peggy Booe testified that, when she needed medical leave, she asked Gorrell to arrange for it as "I felt more comfortable asking Diane . . . she always took care of things." Booe also testified that the servers took customer complaints, and other service problems, to Gorrell, whose skill in resolving such matters made their jobs easier and resulted in better tips, and return visits, by customers. Tips constitute the servers' principle source of income.

According to the testimony of Mike Cortez, a second-shift waiter, he took the difficulties he encountered, first with Assistant Janet Hair, and, later, with Assistant Weaver, to Gorrell, in August and September 1995, at her house. Ultimately, on the advice of Gorrell, Cortez brought his harassment complaints against Weaver to Dunlap's attention. Cortez described Gorrell as "the one that was sort of a mediator between us and the new manager . . . when we talked to Andy too, and Dave Ward."

Jennifer Pratt, a second-shift waitress, testified that she took problems regarding customers to Gorrell. Pratt also complained to Gorrell, on several occasions, that, on Gorrell's days off, the waitresses received little management help from Hair or Weaver. Teresa May, a cook on the second shift, testified that she took work-related problems to Gorrell and, even asked Gorrell to intervene on her behalf with Dunlap regarding a pay and benefits dispute.

Gorrell, in her testimony, related that, in September 1995, at the request of second-shift waitress Linda Finch, she, Gorrell, told Area Director Ward of Dunlap's abusive treatment of employees and his insistence that they serve food neither prepared according to corporate recipe, nor up to company standards of quality. Gorrell raised similar concerns with Ward in October. Also in the fall of 1995, Gorrell testified, a dishwasher on the second shift, Gilbert Preto, reported to her that he had been discharged by Dunlap. Gorrell complained to Ward about it and, on the next day, Preto was reinstated by Dunlap.

As urged by the Respondent, the record is replete with evidence concerning social, nonwork relationships enjoyed between Gorrell and the hourly employees who worked under her supervision. These nonwork contacts included social occasions at the restaurant and visits by the employees to Gorrell's home.

Sunday, October 15, 1995, was a scheduled day off for Gorrell and, so, Mark Weaver was assigned to run the night shift. The evening was a busy one and the restaurant had an insufficient number of employees working and, also, experienced severe food shortages. At least some of the customers walked out. Two of the employees called Gorrell at home, told her what was happening, and stated that Weaver could not handle the situation. They asked Gorrell to come in. Between 7 and 8 p.m., several hours into the shift, Gorrell ar-

¹ The factfindings contained here are based on a composite of the documentary and testimonial evidence introduced at trial. Where necessary to do so, in order to resolve significant testimonial conflict, credibility resolutions have been set forth, *infra*. In general, I have viewed with suspicion uncorroborated testimony of Charging Party Diane Gorrell, and of the Respondent's area director, Dave Ward, and its restaurant general manager, Andy Dunlap, all of whom appeared to me, at times, to be engaged in decided efforts to relate events in a light most favorable to their respective cases.

rived at the restaurant, and, essentially, took over direction of the floor and the employees. During the evening, she met with Weaver near the office and, within hearing range of employees, told him that she was fed up with such situations and that Dunlap did not know what he was doing and could not handle his job.

According to the credited and largely corroborated testimony of Weaver, at about the 10 p.m. restaurant closing time, Gorrell instructed employee Edmiston to order and pick up pizza and to pay for it with money from the store register. Edmiston did so, and returned with the pizza at about 10:15 p.m. Most of the employees then ate pizza in the dining room and, apparently, a circus atmosphere ensued. Water fights, then whipped cream fights and, then, egg fights broke out all over the store. This actively lasted for 1 or 2 hours during which time three or four cans of whipped cream were used up, more than two dozen eggs were broken, and a huge mess was created. Gorrell made no effort to stop it. Later, Weaver testified, Gorrell and employees sat at the counter drinking from plastic "to go" cups. By the time they left the restaurant, she and the others staggered as they walked to the door, and they appeared intoxicated. Weaver estimated that, as a result of the above activities, there were some 25 lost hours of labor. The next day, Weaver orally reported the matter to Dunlap and was instructed to, and did, reduce the report to writing.

It is undisputed that, after leaving the restaurant at about 4 a.m., some of the employees went with Gorrell to her house, where alcoholic beverages were consumed. When the first assistant manager at another store, Kelly Closen, arrived at Gorrell's house at 5:45 a.m., to accompany her to a management meeting, Gorrell was, admittedly, drunk, and hourly employee's were having alcoholic drinks in the living room. One of them, Edmiston, appeared to have passed out. After helping Gorrell to the car, Closen picked up Area Director Ward, and Gorrell lay down in the back seat.

On receiving Weaver's statement on Monday, October 16, Dunlap conducted an investigation and obtained written reports concerning other occasions when Gorrell had brought in, or consumed, alcohol in the restaurant. At trial, Gorrell acknowledged her awareness of the Respondent's policy prohibiting the bringing of alcohol into any of the Respondent's stores.

Shortly before 4 p.m. on Friday, October 20, 1995, Dunlap called Gorrell into his office. Before entering, Gorrell told one of the employees that she thought she was about to be fired. After Gorrell went into the office, a number of second-shift employees, waiting to start work, congregated in the break room, adjacent to the manager's office, where they could see inside the office through a large window. They observed a heated exchange between Dunlap and Gorrell. Amongst themselves, employees opined that they would not have their jobs for long, without Gorrell. Employee Teresa May said that things would be difficult as Gorrell had been the only one in management who would listen to and do something about employee problems. Outside the break room, employee Suzie Walker told manager trainee Sally that, if Gorrell were fired, she, Walker, would walk out with her.

As noted, Gorrell was terminated due to the alcohol matters, and for insubordination. As she left the office and proceeded to the front door, she told inquiring employees that

she had been discharged. On learning that, employee Walker told those in the break room that "I can't stay here either." Employee Mike Cortez told Sally that he, Cortez, was leaving the restaurant to find out what was going on. According to the testimony of Dunlap and Sally, as she departed, Gorrell told a group of the employees, "[L]et's go," and motioned to them, assertions contrary to the weight of the evidence and, which, I discredit. In any event, in a matter of minutes, the second-shift employees walked out and congregated outside the restaurant entrance. The group included Kathy Barnard, Derrick Brown, Mike Cortez, Juan Cortez, Charlotte Edmiston, William Grammer, Fay Hsen, May Hsen, Kris Leeds, Terry May, and Suzie Walker. Some of the employees clocked out; most did not. None of them obtained supervisory permission to leave. Two other employees, Peggy Booe and Jose Deltoro, reported later in the day and, on learning what had occurred, left to join in the protest. Also later on October 20, and on the next day, October 21, employees Jennifer Pratt and Derrick Thomas left the restaurant, not to protest the Gorrell discharge, but, they testified, because of the working conditions existing after the walkout and the resultant additional work tasks. Pratt so advised Dunlap, while Thomas simply left the store during his shift, without saying anything to management officials.

Gorrell and the employees who followed her outside remained near the store entrance for 5 or 10 minutes. They talked to approaching customers and at least some of those customers, after hearing from the employees that they were protesting Gorrell's termination, turned away. On learning this, Dunlap called the police who told Gorrell and the employees that management wanted them off the property. Under threat of arrest if they failed to comply, the group left, and they regathered at Gorrell's house.

It is undisputed that the departure of the employees, in late afternoon on a Friday, left the restaurant in dire straits. At the time of the walkout, there were, already, some 30 customers in the store and, virtually, no hostesses, servers, cooks, or busers to service them rendering the restaurant almost inoperable. Although in the course of the evening, Dunlap and Ward were able to call in some of the first-shift employees, as well as employees from other stores, business was lost, customer service was poor, patrons were angry and, in many cases, they did not pay for their meals. Contributing to the difficulties was the lack of familiarity, on the part of employees normally assigned to certain of the other restaurants, with the computerized operation at the East Peoria store. The customer service problems continued into the next few days.

When Gorrell and the others, evicted from the Bob Evans premises, arrived at Gorrell's house, six to eight of the employees placed a telephone call to Area Director Ward, and they took turns talking to him in a conversation that lasted from 30 to 60 minutes. One of the speakers, Teresa May, credibly testified that the employees, including Kris Leeds, Denise Hageman, Juan Cortez, and Charlotte Edmiston, asked Ward if they still had their jobs, and if they had been fired. They also asked what had happened to Gorrell, and why. May further testified that the employees told Ward that they wanted their jobs, and no one said that he or she had quit. Ward, in his testimony, confirmed the fact of the foregoing telephone conversations, and conceded that the employees advised him that they took their action because

Gorrell had been fired. However, Ward further testified, the employees he talked to told him that they had quit, and none of them offered to come back to work on any terms whatsoever. Based on the probabilities inherent in the situation, and for the reasons noted at footnote 1, Ward's testimony in these regards is discredited. Ward further testified that, in the ensuing days, when he learned from Dunlap that a number of the employees had called the store general manager seeking to come back to work, he, Ward, told Dunlap that, as area director, he did not want to hire back employees who had just quit and left Bob Evans "hanging high and dry" on a busy night. Dunlap, in his testimony, also claimed that when he saw the employees walk off the job, to protest the termination of Gorrell, he believed that they had quit.

In a letter dated November 7, 1995, prepared by an attorney, 14 of the 15 employees whose status is at issue here made unconditional offers to return to work. In deciding to reject those offers, Joseph LeGros, the Respondent's vice president and regional director of operations, testified that the Respondent viewed the subject employees as having "quit and left the restaurant pretty much in a shambles." LeGros further testified that it is Bob Evans' policy and practice, without exceptions, to regard hourly employees who walk off the job without supervisory permission as voluntary quits. In this connection, Dunlap, in his testimony, pointed to the Respondent's work rules, as contained in the handbook distributed to all employees, providing for termination for a first offense violation of the rule prohibiting leaving the premises, during scheduled worktime, without the explicit permission of the manager. Dunlap further testified that, historically, the rule has been uniformly enforced. Bob Evans' personnel records, as prepared by Dunlap, treat all of the individuals who walked out on October 20 as terminated.

C. Conclusions

In *Dobbs Houses*,² the Board held that the restaurant employer in that case violated the Act by discharging 16 waitresses for engaging in a concerted walkout in response to the apparent discharge of a low-level supervisor. Finding that the employees were engaged in a protected economic strike, the Board ruled:

concerted action by employees to protest an employer's selection or termination of a supervisory employee is not automatically removed from the protection of the Act. Each case must turn on its own facts. Where, as here, such facts establish that the identity and capability of the supervisor involved has a direct impact on the employees' own job interests and on their performance of the work they are hired to do, they are legitimately concerned with his identity. Therefore, strike or other concerted action which evidences the employees' concern is no less protected than any other strike which employees may undertake in pursuit of mutual interest in the improvement of their conditions of employment. [Footnote omitted.]

The record evidence in this case shows that, particularly, during the 3-month period after Dunlap became the restaurant general manager, and preceding the Gorrell discharge,

the employees encountered, at the instigation of the supervisors other than Gorrell, what they, the employees, viewed and experienced as harassing and threatening actions. Repeatedly, they turned to Gorrell for aid and protection. Likewise, when the workers encountered food shortages, a reduction in the size of the portions served to patrons, and other attacks on the customer satisfaction on which their tips depended, they turned to Gorrell for corrective action. Indeed, on October 15, 1995, they went so far as to ask Gorrell, and she acceded, to come in on her day off, and take over the shift from another supervisor, because of the chaos caused by food shortages, inadequate staffing, and customer relations problems. The second-shift employees truly viewed Gorrell as the "buffer" between their difficulties and management. Her discharge triggered a spontaneous walkout by employees who saw her as the supervisor who took care of things; the only member of management who would listen to them. In finding, in light of the above, that the employees' action was protected, because of the negative impact on their working conditions that they rationally believed would result from the discharge of this minor supervisor, I have given no consideration to the Gorrell discharge itself, lawful or unlawful, justified or not; it is not at issue here.³ Likewise, I have assigned no weight to the evidence showing that, in addition to work relationships, Gorrell also enjoyed social relationships with certain of the employees. That factor neither adds to, nor detracts from, Gorrell's perceived impact on employee working conditions.

The Respondent concedes that, when the employees walked out, they did so in response to the Gorrell discharge, and the employer knew it. Its claim that it properly viewed the employees as having quit is belied by the record evidence. At the time the employees left the restaurant, not one of them told a member of management that they were quitting. The Respondent's immediate action, in calling the police to order the employees to leave Bob Evans property, within minutes of the walkout, left no opportunity for dialogue, or a statement of employee position, much less a specific demand on the employer by unrepresented and inarticulate workers.⁴ Later that day, after many of the second-shift employees regrouped at Gorrell's house, and, also, in the days that followed, they made clear to Ward and Dunlap that they had not quit, but, rather, that they wanted their jobs. Also, they wanted an explanation for what had happened to Gorrell.

Under Board law, the fact that the employees chose a work stoppage as the means of pressing their dispute does not negate the determination that their activity was protected. Thus, the Board has rejected the view that the protected nature of concerted activity depends on the reasonableness of the method of protest in relation to the subject matter in dispute. *Puerto Rico Food Products Corp.*, supra.

Based on the above, I conclude that, by discharging, and refusing to reinstate, the second-shift employees who engaged in a protected walkout immediately following the Gorrell discharge on October 20, 1995, the Respondent violated Section 8(a)(1) of the Act. As the record evidence shows that Jennifer Pratt and Derrick Thomas later, and on separate occasions, left the restaurant for reasons other than

² 135 NLRB 885 (1962), enf. denied 325 F.2d 53 (5th Cir. 1963).

³ *Puerto Rico Food Products Corp.*, 242 NLRB 899 (1979).

⁴ See *Federal Security*, 318 NLRB 413 (1995).

to join in the concerted protest, the Respondent did not violate the Act by discharging and refusing to reinstate them for leaving the store, during their shifts, without supervisory permission.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Bob Evans Farms, Inc. d/b/a Bob Evans Restaurants is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. By discharging its employees Mike Cortez, Juan Cortez, Fatima Hsen, Kathy Barnard, Kris Leeds, Terry May, Derrick Brown, Peggy Booe, Jose Deltoro, Suzie Walker, Measoon Hsen, Charlotte Edmiston, and William Grammer, on or about October 20, 1995, and, thereafter, refusing to reinstate them, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Respondent has not otherwise violated the Act, as alleged in the complaint.

[Recommended Order omitted from publication.]